

The Freedom of Information Index – Measuring the gap between the Promise and Practice of Freedom of Information Legislation

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Introduction

'I have nothing to say on the topic since we don't use FOI as a journalistic tool, besides, as far as I am concerned FOI is dead.' --- 'Not to have FOI, would be like turning off the water'¹ - Two news and current affairs editors with public broadcasters in two different countries – two diametrically different views on how Freedom of Information, FOI, works in practice. The editors' opinions were part of a study comparing how journalists in Western Australia and Sweden utilised FOI legislation as a journalistic tool to gather information independently. The study highlighted the immense differences in practice between two FOI legislations that on the surface share the same aims and goals: to provide individuals with access to government held personal records to correct wrong or misleading information, to remove unnecessary secrecy to improve quality of decision making, to make government functions clearer², and, perhaps most importantly, to 'develop political democracy through greater opportunities for public participation in the decision making'³. Grand goals – in theory. So good, in fact, that currently more than 50 countries⁴ around the world have passed FOI legislation. It could be argued that FOI legislation has become a hallmark of liberal democracy –no FOI, no 'proper' democracy. However, the Lidberg study of the FOI regimes in Sweden and Western Australia strongly indicated that the gap between what the FOI laws promise and what they deliver in practice is rather big and there are substantial differences between countries.

This article will outline a current project at Murdoch University that aims to create the first International Comparative Freedom of Information Index that will allocate

¹J Lidberg, "For Your Information - the Impact of Freedom of Information Legislation on Journalism Practice and Content in Western Australia and Sweden" (MA, Murdoch University, 2003): 14 and 49.

² A R Olsson, *Yttrandefrihet Och Tryckfrihet*, First ed. (Stockholm: Tiden, 1992): 19-48.

³ M Ricketson and R Snell, "FOI: Threatened by Governments, Underused by Journalists - Still a Sharp Tool," in *Journalism - Investigation and Research*, ed. S. Tanner (Sydney: Longman, 2002):150-163.

⁴ D. Banisar, "Freedom of Information and Access to Government Record Laws around the World," (Privacy International <http://www.privacyinternational.org/>, 2003): Introduction.

each country of study a rank indicating how its FOI regime works in practice. The paper will describe the theoretical foundations on which the project rests, provide an overview of the methodology and research design, and analyse a number of existing socio-economic indexes that are relevant to the creation of the FOI Index.

Background

Being ruled is at times a painful experience. It can be a source of great frustration to feel unrepresented by the party/parties in government. It can be equally frustrating when the elected representatives renege on their earlier promises. Dunn puts it thus:

To be ruled is both necessary and inherently discomfoting (as well as dangerous). For our rulers to be accountable to us softens its intrinsic humiliations, probably sets some hazy limits to the harms that they will voluntarily choose to do to us collectively, and thus diminishes some of the dangers to which their rule may expose us.⁵

Dunn covers a lot of ground: political representation, political accountability and implicitly democracy. These concepts are all disciplines in their own right and to cover them in some depth would require numerous articles. Nevertheless, they are the foundation for the FOI Index project and we need to at least touch on them to provide some background.

Representation and Accountability

All countries that have adopted FOI legislation can claim to have political systems incorporating, if not all, at least most traits of democracy, albeit in some cases at an emerging level if you chose to have liberal democracy, LD, as the benchmark.⁶ Hence, it would be easy to draw the conclusion that the foundation for FOI is democracy. However, the roots⁷ of FOI can be traced back to well before LD was the strongest political system and although democracy certainly

⁵ J Dunn, "Situating Democratic Political Accountability," in *Democracy, Accountability and Representation*, ed. A Przeworski et al. (New York: Cambridge University Press, 1999): 343-344

⁶ Banisar, 1-7.

plays an important role in the emergence and evolution of FOI, it is neither its mother nor its father. We argue that those roles are played by representation and accountability.

In most political systems, ranging from totalitarian to liberal democracies, some degree of representation exists. Whether they are installed via force such as military coups or more democratically via general elections representatives usually claim to rule on behalf of the people. Their rule is built on a contract with the citizens where they in many cases have gained power by promising to deliver a number of outcomes. In the case of an election, the citizens have fulfilled their 'contractual obligations' with the casting of their vote. It is now up to the representative to deliver on his or her promises. It can at times be very tricky to keep track of if and how the representative delivers. This is where the accountability mechanism comes in and where independent access to government held information plays a vital role.

Pitkin divides the nature of representation into two main categories: authorized representation and accountable representation. She defines the difference thus:

Whereas authorization theorists see the representative as free, the represented as bound, accountability theorists see precisely the converse. The authorization theorist defines representative democracy by equating elections with a grant of authority: a man represents because he has been elected at the outset of his term of office. The accountability theorists, on the contrary, equate elections with holding to account: an elected official is a representative because (and insofar as) he will be subject to re-election or removal at the end of his term.⁸

Pitkin concludes that representation will always include some form of trusteeship. She also points out that none of the theories describes and deals with what goes

⁷ S Lamble, "Freedom of Information, a Finnish Clergyman's Gift to Democracy," *Freedom of Information Review*, no. No 97 (2002): 2-8

⁸ H Pitkin, *The Concept of Representation* (London: University of California Press, 1967): 55-56

on during representation 'how a representative ought to act or what he is expected to do, how to tell whether he has represented well or badly.'⁹ This is where FOI fits in. A far-reaching and smoothly working FOI regime will provide the scrutinizers of government (the opposition, the media and individual citizens) with the information they need to determine whether the elected representatives are doing a good job during the term.

According to Dunn, democracies have two major tools (apart from elections) for democratic 'surveillance of their rulers and public officials': criminal law and FOI.¹⁰ The legal option is very limited and can only be utilized when criminal misconduct is suspected and then there is still the issue of proving the misconduct. Much more often the public is concerned with the representatives not fulfilling their end of the contract – the election promises, or telling the truth – a 'misconduct' not covered by the law. This is where we turn to FOI and our expectation for it to deliver independent access to government held information. The importance of this access for the accountability mechanism is masterfully summarized by Przeworski et al:

Yet, to evoke Kant, "All actions affecting the rights of other human beings are wrong if their maxim is not compatible with their being made public." Bobbio (from which this passage is taken, 1989: 84) comments further that "a precept not susceptible to being publicized can be taken to mean a precept which, if it was ever made known to the public, would arouse such a public reaction that one could not put it into action." We do not want governments to take actions that they would have not taken had we known why they are taking them. But this means that we have to know what the governments are doing and why independently of what they want us to know. Our authorization to rule should not include the authority to hide information from us.

Thus, even if elections give governments a broad authorization to rule, this authorization should not extend to informing us. Our information must not depend on what governments want us to know. The institutional implications

⁹ Ibid, 56

¹⁰ D Dunn, "Mixing Elected and Nonelected Officials in Democratic Policy Making: Fundamentals of Accountability and Responsibility," in *Democracy, Accountability and Representation*, eds. A. Przeworski et al. (New York: Cambridge University Press, 1999): 297-300

are obvious: we need offices, independent statistical agencies. To coin a term, we need "accountability agencies," independent of other branches of government and subject to direct popular control, perhaps through elections.¹¹

From an international perspective the FOI Index could be such an 'accountability agency' or perhaps more correctly an indicator of how a specific country ranks compared to other countries when it comes to providing its citizens with independent access to government held information – the building blocks of a far reaching political accountability that operates during both terms and election campaigns.

Then there is the issue of democracy. Political representation and accountability are both considered important traits of democracy¹². However, agreeing on how to define democracy is as hard as getting consensus on what good art is, and for much the same reasons – the beauty of art, and democracy, is in the eye of the beholder. Held puts it thus:

The history of the idea of democracy is curious; the history of the democracies is puzzling. There are two striking historical facts. First, nearly everyone today professes to be a democrat. Political regimes of all kinds throughout the world describe themselves as democracies. Yet what these regimes say and do is often substantially different from one to another. Democracy appears to legitimate modern political life: rule-making and law enforcement seem justified and appropriate when they are 'democratic'.¹³

One only needs to consider the fact that both the former communist countries of Eastern Europe and the Western European countries claimed to have implemented the 'true' form of democracy (eg German Democratic Republic). At the moment it seems as if the liberal democratic model has the upper hand (whether this is due to LD being a superior political system or because of its close links to the highly successful capitalistic economic model is debatable). But

¹¹ A Przeworski, et al. *Democracy, Accountability and Representation* (Cambridge: Cambridge University Press, 1999): 24

¹² D Held, *Models of Democracy*, 2nd ed. (Stanford, CA: Stanford University Press, 1996): xi

¹³ *Ibid.*, xi.

the point is, most nations seem to want to claim to be democratic, or to be more democratic than others. This is what makes democracy such a quagmire. For the purpose of this article it will suffice to acknowledge that representative democracy plays an important role in the advancement of FOI, because it hosts the concepts of political representation and accountability.

The Fourth Estate

Prezworski et al, called above for 'accountability agencies' independent of the political system. To a certain extent such agencies already exist in many countries in the form of the media taking on the fourth estate role as defined by Schultz: 'The citizens have delegated to the media to scrutinize power for them and to empower them via selecting and presenting quality information.'¹⁴ The fourth estate concept is the focus of much debate and as an entity it is under constant threat on many fronts. It needs adequate funding and, most importantly, independent access to government held information for it to fulfill its role as an agency of accountability. For the purpose of this project we have identified investigative journalists as representatives of the fourth estate role in order to track how FOI works in practice (what it delivers) and how it functions as an accountability tool.

To summarize: democracy, in its various forms, hosts the concepts of political representation and accountability. To hold someone accountable you need information about their actions (and non-actions). This information must be obtained independently and be of high quality. If the representative can directly or indirectly vet the information they will use it for their purposes and the accountability concept falls. In theory each citizen has the capacity to use methods such as FOI, to hold their representatives accountable. In practice this role has been delegated to the political opposition and the media and in some instances lobby groups and non-government organisations. It is argued here that independent access to quality government held information is at the core of

¹⁴ J Schultz, *Reviving the Fourth Estate* (Melbourne: Cambridge University Press, 1998): 15.

political accountability and that FOI legislation can provide an accountability scale against which different regimes can be measured.

Overall Methodology

This is a long-term project. The study deals with FOI globally. Ideally all countries that have passed FOI legislation should be part of the study. However, since there are 50 plus¹⁵ countries, and counting, that have implemented FOI, this is not practically possible. Instead this project will design a methodologically sound way of collecting the data needed to allocate FOI countries a rank indicating to what extent their FOI regime delivers on its promises. The data collecting tools will be trailed in five countries to create a framework index that has the potential to expand to cover all FOI countries.

The countries, which will be used to set up the framework index are Australia, Sweden, The US, South Africa and Indonesia (if the Indonesian FOI Act is passed in time. Thailand will be used as a backup country). The rationale for choosing these countries is that they provide samples of different FOI traditions, economic and democratic development and a geographic spread. One example of the difference in attitudes towards ownership of information is described by Green:

Although it is dangerous to generalise, in the USA the predominant attitude is that the government collects and holds information on behalf of its citizens, and that the citizens therefore have a right to access that information. In Australia, on the other hand, the prevailing attitude is that information belongs to the government and will be released at the government's pleasure.¹⁶

The overarching research question for the project is: **To what extent, if any, are the promises made by Freedom of Information legislation borne out by the**

¹⁵ Banisar, 2-8.

¹⁶ K Green, "Database Journalism," in *Journalism - Investigation and Research*, ed. S. Tanner (Sydney: Longman, 2002): 87.

practice? The hypothesis being that there is a gap between what the laws aim to deliver and what is delivered in practice.

To capture the data needed to create the index three separate studies have been conceived. The first one deals with the promise of FOI, that is the legislation itself: what its aims are and how the law purports to accommodate these aims. The second study will map the practice of FOI: what the different FOI laws deliver. A case study will involve enlisting a number of high profile investigative reporters in each country to lodge one FOI request each, tracking the progress and evaluating the outcome. The third study will survey leading politicians' and public servants' attitudes towards FOI. The surveys will be important, since they will also attempt to capture the politicians' and public servants' attitude regarding whistle blowing. In some FOI legislations, eg the Swedish FOI Acts¹⁷, journalistic sources have legal protection. Only in exceptional circumstances can a journalist be forced to reveal their sources. This is an often overlooked, but very important part of the overall information climate. The last part of the project will be the compilation of the index. Using ranking templates, the data from each study will be collapsed into a single figure for each country of study, which will in turn be the base for calculating the end rank for each country. This part of the research design is not yet finished and will pose a challenge because the bulk of the data will be of qualitative nature. This data will have to be 'translated' via the evaluation templates into a quantitative measure – the index.

Literature Review

The literature shows that while a number of comparisons of different FOI regimes have been made, these studies have focused on comparing the 'letters of the law' rather than the practical outcome - what the FOI laws deliver in actual

¹⁷ T Sefastsson, *Offentlighetsprincipen I Praktiken* (Stockholm, Sweden: Prisma, 1999): 117-127.

access to information. Banisar¹⁸Coulthart¹⁹, Harrison and Cossins²⁰, Lamble²¹, Ricketson²², Snell²³ and Waters²⁴, among others, have from an Australian perspective, and in Snell's case with international outlooks, covered a wealth of legal aspects and journalistic use of FOI. But there are no case studies tracking actual FOI requests, testing the law if you like, and international comparisons on a practical level of how the different legislations deliver on their promises. At this point the oral information climate as part of FOI also seems to be largely overlooked. Although shield laws for Australian journalists was the subject of a senate inquiry in Australia²⁵, researchers have not focused on their importance to the overall information climate.

The Swedish literature is also centered on the legal perspectives of FOI. There is ample literature analyzing and suggesting uses of FOI. Writings by, among others, Olsson²⁶, Sefastsson²⁷, Hederén²⁸, Gustafsdotter²⁹ and Löwenberg³⁰ cover these areas well. However, when it comes to testing what the Swedish FOI delivers, there are no scientific studies available. The Swedish journalism union, Svenska Journalistförbundet, SJF, conducted two 'openness tests', of Swedish Government agencies in 1997 and 2000³¹, and although they give an indication of a relatively wide general knowledge of FOI among Swedish public servants, they are of little use from a scholarly perspective.

¹⁸ Banisar, "Freedom of Information and Access to Government Record Laws around the World."

¹⁹ R Coulthart, "Why the FOI Act Is a Joke - or Don't Shoot the Media, We're Doing Our Best," *Freedom of Information Review*, no. 81 (1999).

²⁰ K Harrison and A Cossins, *Documents, Dossiers and the inside Dope - a Practical Guide to Freedom of Information* (Sydney: Allen & Unwin, 1993).

²¹ Lamble, "Freedom of Information, a Finnish Clergyman's Gift to Democracy."

²² Ricketson and Snell, "FOI: Threatened by Governments, Underused by Journalists - Still a Sharp Tool."

²³ R Snell, "In Search of the Freedom of Information Constituency: Case 1 - the Media," *Freedom of Information Review*, no. No 78 (1998).

²⁴ N Waters, "Print Media Use of Freedom of Information Laws in Australia," (Sydney: Australian Centre for Independent Journalism University of Technology Sydney, 1999).

²⁵ Commonwealth of Australia, "Off the Record, Shield Laws for Journalists Confidential Sources," (Canberra: Parliament of the Commonwealth of Australia, 1994).

²⁶ Olsson, *Yttrandefrihet Och Tryckfrihet*.

²⁷ Sefastsson, *Offentlighetsprincipen I Praktiken*.

²⁸ J Hederén, *Journalistiska Arbetsmetoder* (Göteborg: Spektra, 1988).

²⁹ J Gustafsdotter, *Murvlarnas Lagbok* (Kalmar, Sweden: FOJO, 2001).

³⁰ A Löwenberg, *Undersökande Journalistik* (Stockholm: Ordfront, 1992).

³¹ Available on the SJF website: www.sjf.se

A search for relevant literature and earlier studies in the United States, South Africa and Indonesia (and Thailand) remains to be done. Indications are that there will be ample literature to be found in the US with its relatively 'old' FOI (1966), whereas there will be less material relating to South Africa (2000) and Indonesia (not yet passed by parliament), as relative newcomers to the FOI family.

Hence, this project will be unique in three ways:

- It will for the first time provide an international tool for comparing and evaluating access regimes in different countries based on the **practice** of FOI
- It will track genuine FOI requests to test in practice what the different FOI laws deliver
- It will incorporate protection of journalistic sources (also known as whistleblower protection and shield laws for journalists) as one measure of the overall information climate

The Promise of FOI

The research question for the first study is: **What are the aims for the different Acts and what do they promise to deliver in terms of information access?**

Access to Documents

The first part of this study will deal with access to government held documents (the term documents includes all media, electronic as well as paper based) and will profile the FOI legislations in the countries of study and evaluate them according to a template, which is still being designed. Parameters to be evaluated will include: minimum turnaround time, cost, exemptions from the act and where the act sits legally (ie as part of the constitution or not). These parameters will generate a score that will be one of the variables for calculating the end rank for the index. As mentioned above, numerous comparisons of different FOI legislations have been done and apart from reviewing the acts, this

part of the project will draw on earlier studies. Banisar's global Freedom of Information Survey will be a great asset.³²

Legal Protection for Journalistic Sources

The second part of this study will examine if legal protection of journalistic sources exists in the countries of study. In the Swedish legislation, for instance, the journalistic shield laws are 'buried' within the different acts regulating FOI, although it is still considered as the second pillar of FOI in Sweden (access to documents being the first).³³ It may be argued that the 'oral information climate' relates more to unofficial leaks and therefore falls outside the scope of this project. While this may be true the free flow of information from government into the public domain is greatly enhanced if public servants know that, rather than being penalized themselves, their employer will be penalized if they investigate who 'leaked' today's front page story. The Swedish 'whistle blower' is further protected by the fact that the journalist is bound by law not to disclose the source risking a heavy fine and a one-year prison term. Swedish journalists can only be forced to reveal their sources on grounds of national security, treason and if the source has broken confidentiality agreements.³⁴ Measuring other countries against this level of protection will provide another indicator of the level of information flow in the country as a complement to document access.

The Practice of FOI

This part of the project will measure what the different FOI regimes deliver in practice and what attitudes leading politicians and public servants have regarding FOI.

³² Banisar, "Freedom of Information and Access to Government Record Laws around the World."

³³ Sefastsson, *Offentlighetsprincipen I Praktiken*.

³⁴ Ibid, 120-127

The Case Study

The overarching research question is: **In practice, does FoI supply journalists (and media organisations) with independent access to government held information?** Complemented by the sub questions:

- Does the procedure facilitate or obstruct information gathering using FOI?
- What are the attitudes among public servants encountered during the process of the request?
- What quality of information does FOI deliver to journalists?

Methodology

Three experienced and 'high profile' investigative reporters in each country of study will be recruited to lodge one FOI application each to the most relevant federal/national government agency. The exact nature of the requests will be determined in a consultative process between the researchers and the reporters. It is, however, vital that the requests are as similar as possible to provide comparability between the different countries. The framework topics are:

1. The complete account/list of the Prime Minister's travel and representation expenses for 2002 and/or all the statements for the government issued credit cards used by the political and public service staff of the PM's office.
2. The COMPLETE list of nations that the country of study trades (import/export) weapons with, including sums for each country, date of trade and what sort of items.
3. Refugee issues: To be further identified with each reporter.

Each request will be tracked by the lodging reporter according to an evaluation template provided by the researchers. The template will, among other areas, cover:

- Procedure: time spent preparing request, request method (eg written or verbal or both), cost and turnaround time.

- Attitudes encountered: public servants knowledge of FOI, general attitude towards FOI, is the public servant helpful (facilitator or obstructionist?)
- Outcome: is the information accessed useful for the investigation? Is it of critical value for the story? Can you take the story further based on the information you accessed?

It is quite likely that interviews with the reporters will have to be conducted to complement the evaluation templates.

Sampling Issues

Membership in the International Consortium of Investigative Journalists (ICIJ) will be used as a first screening process and one of the members of the sample group will be drawn from ICIJ's membership. Through a snowball technique, the other two members of the group will be nominated in a consultative process between the reporter and the researchers.

The Survey

The purpose of the survey study is to answer the question: **what are the attitudes to FOI and legal protection of journalistic sources among leading politicians and public servants.** The questionnaires will be sent to all federal/national ministers heading a department, the chief public servant and the FOI coordinator. The rationale for targeting federal/national government departments is that the countries of study have slightly different political systems. Some have a federal system – some do not. To achieve comparability in the data, the studies need to be implemented on a national level. Another advantage using national agencies, including the Prime Minister's Office, is that the attitudes towards FOI and the flow of information influencing other levels of government come from the top. The argument being, that if the highest office in the land is not keen on openness, you can hardly expect the other layers of government to be different. The surveys will most likely be built on the evaluation forms used by our

FOI reporters enabling a comparison between what FOI delivers in practice and what the official view (or perhaps 'spin') is.³⁵

To get a general indication and to put the project into a further global context a questionnaire, again built around the FOI reporter evaluation template, will be sent to all the ICIJ members that operate in countries that have implemented FOI legislation. On last count 27 countries.³⁶

The FOI Index

The general purpose of an index is to provide an overview over large quantities of data that are usually complex in nature. There are different types of indexes, some entirely built on quantitative data such as crime and stock market indexes. However, in the last 10-15 years, a number of 'socio-economic' indexes have been created. One defining property of these indexes is that they often combine quantitative and qualitative data³⁷. Neuman points out that an index is quite easy to create and at face value seem to have great validity. He argues that the researcher therefore has a great responsibility to make sure that 'every item in the index has face validity...each part of the construct should be measured with at least one indicator.'³⁸ In other words, the legitimacy of an index rests to a large extent on the methodology used to create it. As part of building the method for the Freedom of Information Index (FOII), three existing indexes have been analysed.

³⁵ the core issue in this part is to probe the attitudes towards the ownership of information. Does the government own the information held by its department, or is the government the custodian, keeping the information on behalf of the public?

³⁶ Center for Public Integrity, *Member Biographies* (2003 [cited 14/8/2003]); available from <http://www.icij.org/dtaweb/ICIJMemberBios.asp>.

³⁷ L. Nueman, *Social Research Methods - Qualitative and Quantitative Approaches* (Sydney: Allyn and Bacon, 2000): 177.

³⁸ Ibid

The Corruption Perceptions Index

Transparency International (TI) is a non-profit organisation based in Berlin, Germany. TI has published the Corruption Perceptions Index (CPI) since 1995. The Index was originally designed by Dr Johann Graf Lambsdorff and his colleagues based at Göttingen University in Germany. In its mission statement TI defines the purpose of the organisation thus: 'to curb corruption by mobilising a global coalition to promote and strengthen international national Integrity Systems'.³⁹ The bulk of TI's funding comes from public institutions and foundations around the globe. The private sector does also contribute to TI.⁴⁰

The CPI is described as a composite index⁴¹ that attempts to capture the perceptions of the level of corruption as perceived by analysts and expatriate businesspeople.⁴² The index is based on selected answers drawn from a number of surveys. In all 15 survey sources were included in the 2002 edition of the CPI. The surveys were implemented between 2000-2002 (implementing institution/company in brackets): State Capacity Survey (Columbia University), Asian Intelligence Issue (Political and Economic Risk Consultancy), Institute for Management Development, IMD, Switzerland (World Competitiveness Yearbook), World Business Environment Survey (World Bank), Opacity Index (Pricewaterhouse Coopers), Country Risk Service and Country Forecast (Economist Intelligence Unit), Nations in Transit (Freedom House), Africa Competitiveness Report (World Economic Forum), Global Competitiveness Report (World Economic Forum), Corruption Survey (Gallup International on behalf of TI).⁴³

³⁹ Transparency International, *Mission Statement* [Website] (2003 [cited June 8 2003]); available from www.transparency.org/ti/mission.html.

⁴⁰ Transparency International, *About Ti* [website] (2003 [cited August 6 2003]); available from www.transparency.org/about_ti/funded.html.

⁴¹ Neuman, 177.

⁴² Transparency International, *Methodology* [website] (2003 [cited March 5 2003]); available from www.transparency.org/cpi/2002/dnld/cpi2002.methodology.pdf.

⁴³ Ibid, appendix

The respondents were asked to rank how severe they perceived the corruption to be in a specific country. A typical question is like this one from the Asian Intelligence Issue survey: 'How do you rate corruption in terms of its quality or contribution to the overall living/working environment?'⁴⁴ Each source/survey uses its own scaling system. To combine the results of the surveys into one single measure per country (allocating a rank on a scale from 1-10, where 1 is high rate of corruption) the designers of the CPI use a two-step approach. Step one use the standard deviation method to standardize each source after which the average for each country is calculated.⁴⁵ This method was adequate for the first few years of 'merging' the different sources. However, Lambsdorff and his colleagues noted a tendency towards 'continuously smaller diversity of assessments'. There were also instances where scores would be below 0 (eg. Bangladesh -1.7) and above 10 (eg. Finland).⁴⁶ To avoid this they concluded that the scores had to be stretched using the more complicated beta transformation standardization method available in most statistics softwares. This method made sure that the ranks stayed within the 10-point scale relative to each other.

A number of the surveys cover the same countries. This overlap, argues Lambsdorff, allows for cross-referencing of the ranking. This is, according to Lambsdorff, the main strength of the methodology behind the CPI and allows for relatively high confidence intervals in the ranking of the individual countries.⁴⁷

Analysis

As Lambsdorff points out 'unbiased, hard data [regarding the extent of corruption in a country] continue to be difficult to obtain and usually raise problematic questions with respect to validity'.⁴⁸ It could be argued that this is based on the

⁴⁴ Ibid, appendix

⁴⁵ Ibid, p5

⁴⁶ Ibid pp 5-6

⁴⁷ Ibid p 2

⁴⁸ Ibid p 1

intrinsic secrecy surrounding corruption. Put simply, corruption is hard (perhaps close to impossible) to measure in quantifiable terms. Hence, the CPI rests entirely (as the name suggests) on a number of peoples' perceptions of the extent of corruption. However, as Lambsdorff says, this may still be the most credible way of comparing corruption in different nations.⁴⁹ Because no other measure of corruption exists the base data is the ranking provided by the respondents. This is a validity problem in itself.

Another validity problem is the selection of the sample groups. The respondents are drawn from two groups: expatriate business people and analysts from the academic and corporate sector. None of the surveys include respondents drawn from citizens of a country or the public and political sector. (This has been somewhat rectified by the recent publication of the Global Corruption Barometer, a pilot survey distributed to 40 838 citizens in 47 countries measuring attitudes within each country towards corruption.⁵⁰)

Dow Jones Sustainability Indexes

The Dow Jones Sustainability Indexes (DJSI) is an offspring to the Dow Jones Stock Market Index and was introduced in September 1999 with the aim to 'provide objective benchmarks for the financial products that are linked to economic, environmental and social criteria.'⁵¹ It is a commercial entity financed by the sale of licences, which allows licensees (mainly financial management companies) to use the index for benchmarking sustainable investment portfolios. Currently the index rank 10% of the largest 2500 companies globally and 'aim to cover 20% of the total global market cap of each industry.'⁵² We sought information about the cost of each licence and got the following response from the SAM-Group, a Swiss based business company that collects and analyses the data for the index:

⁴⁹ Ibid p 1

⁵⁰ H Bosh, "Introducing the Ti Global Corruption Barometer," *TI Australia News*, no. 35 (2003): 1

⁵¹ Dow Jones Sustainability Indexes, *Frequently Asked Questions* (2003 [cited December 3 2003]); available from www.sustainability-index.com/faq.html.

⁵² *ibid*

Thank you for your interest in the Dow Jones Sustainability Indexes. Information about the license fees is something that we only provide directly to interested prospects - mainly, because its competitive information, but also because the price varies depending on the product. However, should you need further information about the license fees for academic purposes, please let me know.⁵³

The DJSI cover three main areas in its data collection: economic performance (with emphasis on corporate governance), environmental impact and performance, and social performance. Each area is weighted roughly a third each in calculating the figures for the end rank. The most important data collection instrument is an extensive questionnaire⁵⁴ to be filled out and signed by the companies' CEO or equivalent. The answers are then cross-referenced with among other sources media reports and stakeholder reports. A major difference to the CPI is that the analysts rank the answers in the questionnaire according to a template. For example the area criteria 'corporate governance' has the general weighting of .054. The specific question: How many members are on your Board of Directors? carries the weight of .08. The answers are given the score in the following intervals:

11-15 Board Members: 100

6-10 Board Members: 75

0-5 Board Members: 0

Hence, if the company had 12 members of the Board the end value for this answer would be calculated thus:

$$100 \times .08 \times .054 = 0.432^{55}$$

⁵³ Alexander Barkawi, e-mail, 11 November 2003 2003.

⁵⁴ Dow Jones Sustainability Indexes, *Questionnaire* (2003 [cited December 3 2003]); available from <http://www.sustainability-index.com/assessment/questionnaire.html>.

⁵⁵ Dow Jones Sustainability Indexes, *Guidebook* (2003 [cited 18 March 2003]); available from <http://www.sustainability-index.com/html/publications/guidebooks.html>.l: 8-14

Analysis

Apart from the method used to evaluate and calculate the rank the DJSI is quite similar to the CPI and shares the same validity problems. At the core is, again, that the DJSI does not generate its own independent quantitative data. It relies on the management of companies to provide accurate data in areas that are notoriously hard to verify and check. The DJSI also battles a general legitimacy problem in that it does not exclude companies producing chemicals, weapons and tobacco products. The DJSI lists a number of arguments for including all sorts of companies in its index. One is that by including, for instance, highly polluting companies and picking the best of the worst 'we recognize that some companies are more responsible in managing their impacts than others and are thereby leading their peers towards a more sustainable way of doing business.'⁵⁶

DJSI recognises that transparency is an important part of building up the legitimacy for the index and it is to their credit that the whole methodology and the questionnaire used is available on their web-site (apart from the price of the licence...). To further the validity of the index the international audit firm Price Waterhouse Coopers has confirmed that the sustainability evaluations are in line with the methodologies and applied appropriately by the SAM Group staff⁵⁷. Given the cloud hanging over international auditing firms in the wake of Arthur Anderson's role in the Enron corporate fraud case, the question arises whether this really strengthens the validity of the DJSI. Perhaps an audit by university-based independent researchers would be preferable.

The Conflict Barometer

The last socio-economic index we looked at is the Conflict Barometer, created, compiled and published annually by the Heidelberg Institute on International

⁵⁶ Dow Jones Sustainability Indexes, *Frequently Asked Questions* (2003[cited December 3 2003], available from www.sustainability-index.com/faq.html).

⁵⁷ Dow Jones Sustainability Indexes, *Verification* (2003 [cited 16 March 2003]); available from <http://www.sustainability-index.com/html/assessment/verification.html>.

Conflict (HIK) at Heidelberg University in Germany. The HIK is a non-profit registered organisation and 'is dedicated to research, evolution, and documentation of inner- and interstate political conflicts.'⁵⁸ We included this index in our analysis because it claims to use both quantitative and qualitative data.⁵⁹ A very elaborate coding system is used to track and describe the more the 301 conflicts contained in the database that is the core of the index.

Analysis

As with the other indexes described the bulk of the data is not independently generated, but relies on earlier studies and media coverage of conflicts⁶⁰. The Barometer allocates a rank of between 1 and 4 to each conflict, where 1 is latent conflict and 4 is war. However, it is very unclear how the different ranks are calculated. The most important lesson learnt from the Conflict Barometer is that it is of vital to clearly explain what methodology is used and how the rank is calculated.

Concluding Index Analysis

The CPI has risen to prominence quickly. Since its start in 1995 it has emerged as one of the leading indicators in the social sciences, in spite of its inherent weaknesses, as pointed out above. The DJSI currently has 47 licensees⁶¹ and is often quoted as an authority in ranking companies' performance from a sustainability perspective, again despite much the same weaknesses as the CPI. The Conflict Barometer is less well-known, but shares the same core problem with the other indexes described: the lack of independent generation of quantitative and qualitative data. This indicates that there is a need for instruments and tools that can visualize complex structures in society, such as

⁵⁸ Heidelberg Institute on International Conflict Research, *Conflict Barometer* (2003 [cited 15 March 2003]); available from http://www.hiik.de/en/index_e.htm.

⁵⁹ Heidelberg Institute for International Conflict Research, *Kosimo Manual* (2002 [cited 13 March 2003]); available from http://www.hiik.de/en/index_e.htm: 1

⁶⁰ *ibid*:2

⁶¹ Dow Jones Sustainability Indexes, *Licensing* (2003 [cited 5 December 2003]); available from <http://www.sustainability-index.com/html/other/licensing.html>.

corruption, corporate sustainability and political conflict, in a way that is more easily comprehended. In an increasingly globalised and complex world order, it also seems more relevant than ever to compare different countries in terms of their social structures, problems and solutions.

This is very promising for the Freedom of Information Index (FOII). Like the indexes profiled above it will provide overview and make it easier to understand and compare how information flows in different countries. The greatest strength of the FOII compared to the other indexes profiled in this paper is that it will have a component where what it sets out to rank will be independently put to the test and measured via a case study. The final ranking templates for evaluating the data provided by the different studies are still under design. It is however, highly likely that a model similar to the weighting used in the DJSI will be used for the survey answers. The greatest challenge will be to create a sound evaluation template for the case study – the most important part of the project.

Conclusion

This article has outlined the Freedom of Information Index project currently underway at Murdoch University. It has argued the need for an international comparative tool that can be used to evaluate FOI regimes in different countries. The basis for the argument is the need for increased accountability in systems that use political representation. At the core of political accountability, it has been pointed out, is the independent access to government held information. Without this independent access the media cannot fulfil its fourth estate role of scrutinizing power. The best tool, to date, to guarantee this access are various FOI acts.

The article has profiled a number of existing socio-economic indexes and pointed to their main weaknesses: the lack of independently gathered data. At the core of the Freedom of Information Index will be a case study that will, in practice, track

a number of FOI requests, hence generating the sort of data missing in the other indexes described.

It has been pointed out that the different FOI laws globally are at very different stages in their 'evolution'. There is widespread consensus among the users of FOI in Australia that the different Acts need change and reform. The capacity to compare and contrast different FOI regimes could be an important agent of change, not only in Australia, but perhaps on a global scale.

In the end FOI is about the right to knowledge - the right to know what our elected representatives are doing and how they are performing – independently without the spin. When former US President James Madison in 1822 chaired the committee which drafted the First Amendment to the US Constitution he put it thus:

Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy or perhaps both.⁶²

⁶² M Pitt-Payne and Supperstone, T, *The Freedom of Information Act of 2000* (London: Butterworths, 2001).: v

References